



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

IN REPLY REFER TO

5720.1b
Ser 13/3FA0642.13A
October 22, 2013

MuckRock News
DEPT MR 2597
PO Box 55819
Boston, MA 02205-5819

Dear Ms. Kang:

SUBJECT: FINAL RESPONSE TO FREEDOM OF INFORMATION REQUEST:
NAVY/"THE INVISIBLE WAR"

This letter is a final response to your Freedom of Information Act (FOIA) request in which you requested copies of "any minutes, reports, memoranda, notes, or other documents pertaining to the 2012 documentary 'The Invisible War' or its director Kirby Dick." Your request was forwarded to us by Director Navy Staff (DNS)-36 on February 28, 2013 for action and direct response to you.

We processed your request in accordance with the FOIA (5 U.S.C. § 552), Part 701 of Title 32 of the Code of Federal Regulations, and the Department of the Navy FOIA Program (SECNAVINST 5720.42F). In conducting our review of the records maintained by Office of the Judge Advocate General (OJAG) Headquarters, we discovered a total of 194 pages of responsive documents in our files. As stated in our e-mail to you of March 15, 2013, we located and collected responsive documents, including documents from the Office of the Judge Advocate General, Criminal Law Division (Code 20), U.S. Navy Chief of Information (CHINFO) and the Department of Defense (DoD). A subsequent search of our records revealed responsive documents belonging to the Office of General Counsel for the Navy (OGC), Navy Personnel Command (NPC), Office of the Chief of Naval Operations (OPNAV), United States Marine Corps (USMC) and the United States Air Force (USAF). This release determination was coordinated with the above listed offices, with the exception of the USAF. The documents belonging to USAF, a six page "Production Assistance Agreement", were forwarded to USAF for direct response to you on April 25, 2013.

On May 16, 2013, this office provided you with an interim release of 46 pages of responsive documents. Those documents consisted of documents and e-mails regarding media coverage of "The Invisible War." The following provides you with my

releaseability determination of the remaining 142 pages of responsive documents maintained by OJAG Headquarters. Out of the 142 pages of documents belonging to the Department of Defense and Department of the Navy, I concluded that FOIA Exemption b(5) protects from disclosure 117 pages of documents in their entirety. These documents are divided into two categories and contain legal advice and/or legal analysis. The two categories of documents consist of (1) e-mails regarding the legal review of and legal advice on a disclaimer used for screenings of "The Invisible War" on DoD facilities and (2) e-mail chains and documents regarding the disposition of Navy and Marine Corps cases discussed in "The Invisible War." FOIA Exemption b(5) protects from disclosure these documents because the documents contain attorney work-product privilege material, attorney-client privilege material, deliberative process privilege material, or a combination thereof.

The attorney work-product privilege applies broadly to protect documents, including e-mails, and other memoranda prepared by an attorney in contemplation of litigation. As attorney work-product privilege does not distinguish between factual and deliberative materials, there is no requirement to conduct a segregability analysis. Of the 117 pages of responsive documents withheld in their entirety, I withheld 42 that were prepared in foreseeable anticipation of litigation, and as such are exempt from disclosure under FOIA Exemption b(5) as attorney work-product.

The attorney-client privilege incorporated in Exemption b(5) concerns confidential communications between an attorney and client and any opinions given to the client by an attorney based upon, and thus reflecting, the subject matter of those communications. Of the 117 pages of responsive documents withheld in their entirety, I withheld 48 because they contain protected attorney-client communications. The facts in these materials are inextricably intertwined with the protected communications and associated material or are factual matters synthesized by the attorney from material communicated by the client. Accordingly, segregation of the attorney-client privileged information is not possible.

The deliberative process privilege of Exemption b(5) protects from disclosure internal advice, recommendations, and subjective evaluations. I have determined that 44 pages of the

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withheld documents contain internal advice, recommendations, and working papers. These pages are non-segregable because they contain facts that are inextricably intertwined with deliberative material, overlap with non-releasable attorney work-product or attorney-client privileged material, or both. Accordingly, I am withholding these 44 pages of responsive documents in their entireties under Exemption b(5).

Some of the records that I withheld in their entireties under FOIA Exemption b(5) also contain the names and other Personally Identifiable Information (PII) of particular service members and DoD civilian personnel. This information is exempt from disclosure under Exemption b(6), as release of this information would implicate a legitimate privacy interest and I find no public interest in the release of this information. Additionally, 62 pages of withheld documents contain records and/or information compiled for law enforcement purposes, the release of which would constitute an unwarranted invasion of personal privacy. Those documents are also exempt from disclosure under Exemption b(7)(c).

I am making a partial release of the records contained in enclosures (1) through (10) consisting of twenty-five pages. The documents being released consist of e-mails regarding the scheduling of a meeting of DoD and Service experts to discuss questions/concerns arising out of "The Invisible War," documents related to media coverage, and documents related to the disclaimer used for "The Invisible War" screenings on DoD facilities. For the same rationale I set forth above, I withheld PII and non-segregable deliberative, attorney-client, or attorney work product material from those documents. Names of director level officials, public officials (e.g. public affairs officers, commanding officers, etc.) have been released consistent with Navy and DoD policy. Please note that the attachment from enclosure (3) was previously provided to you on May 16, 2013.

I am the official responsible for the partial denial of your request. An adverse determination may be appealed, in writing, to Office of the Judge Advocate General (Code 14), 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, DC 20374-5066. If you appeal, I recommend that your envelope and statement bear the notation "FOIA Appeal." Your appeal must be postmarked within 60 days of the date of this letter. There are

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no assessable fees associated with the processing of your request.

If you have any questions, please contact Lieutenant Paul A. Richelmi, JAGC, U.S. Navy, by e-mail at paul.richelmi@navy.mil or by phone at (703) 614-5360.

Sincerely,



S. F. THOMPSON
Captain, JAGC, U.S. Navy
Deputy Assistant Judge Advocate
General (Administrative Law)

- Enclosures:
1. E-mail chain "Re: NSS Session on "The Invisible War"
 2. E-mail chain "RE: NSS Session on "The Invisible War"
 3. E-mail "THE INVISIBLE WAR MOVIE TRAILER"
(attachment previously provided on May 16, 2013)
 4. E-mail chain "FW: Invisible War"
 5. E-mail chain "FW: NSS Session on "The Invisible War"
 6. E-mail chain of Friday, July 20, 2012
 7. E-mail chain of Tuesday, July 24, 2012
 8. E-mail chain of Sunday, July 29, 2012
 9. E-mail chain of Tuesday, July 31, 2012
 10. E-mail chain "RE: Dispo on Navy cases in the Invisible War"